

SUMMARY MINUTES

**BUILDING ADVISORY BOARD
ROOM 107, CITY-COUNTY BUILDING**

TUESDAY – JUNE 13, 2006 – 4:00 P.M.

Members Present: Bob Haworth, Les Appleby, Vernie Stillings, Dallas Bruhl, Kenny Hancock, Jim Manley - Bob Dolan arrived at 4:05, Steve Barnett arrived at 4:21)

Members Absent: Rick Walters

Staff Present: Mike Roberts, Sue Cline, Greg Bentgson, Lieu Ann Elsey, Shandi Wicks, Mike Schrage

Audience Count: 9

Meeting was called to order by Bob Haworth, Chairman, at 4:00 p.m.

(A) Approval of May 9, 2006 minutes

MOTION: Vernie Stillings moved to approve minutes as written

SECOND: Kenny Hancock seconded the motion

DISCUSSION: None

VOTE: 6-0 approved

(B) Consideration of City Commission request to reconsider some provisions of the proposed building contractor licensing ordinance

Mike Roberts presented the staff report (see attached) and re-capped some of the questions/concerns of the City Commissioners regarding provisional licensing and consideration of a sunset date and also a more detailed itemization of the Class D category of contractor licensing with emphasis on specialty licenses.

(4:05 – Bob Dolan arrived)

Mike also reviewed the proposed classes of contractors – A, B, C, D and the definition of each. He also clarified that a Class B license would also include a contractor who performs non-structural remodeling of buildings over 3 stories in height. The Class D license is currently a “catch all” type category which would include for example demolition contractors, sign contractors and any other specialty type contractors.

Bob Haworth – Questions or comments from the board?

Jim Manley asked for clarification about the provisional license – what would the requirements be for that type of license? Mike Roberts answered. Mr. Manley said that provisional license to him means “temporary” and also questioned the test versus the experience. Mr. Manley expressed an opinion indicating that he did not agree with the granting of a provisional license without a requirement for testing also.

Mike Roberts reminded the board that their original recommendation to the City Commission was to allow for a provisional license with no sunset date, meaning once a provisional license was approved

and issued it would be good for as long as the designated “qualified person” remained in the employ of the company and that company’s license remained in good standing and had not been disciplined by the jurisdiction or allowed to expire without renewal by the contractor. A provisional license would never require a test to be taken, although a contractor could always choose to take the test if he so desired.

Greg Bengtson, City Attorney, did offer a point of clarification regarding the provisional licensing requirements and the fact a contractor does have to meet a requisite amount of time in which he is required to have been a registered contractor with the City of Salina for a specified number of years (depending on the Class of license) and also has to show a history of permits pulled in the City of Salina for the class of work for which he is requesting a provisional license.

Public Comments/Questions:

Mike Flory – President of the Homebuilders Association (HBA) – stated that he represents approximately 130 members and associate members (includes commercial, residential and small job type contractors) and they have all been discussing this issue recently and also in past months when the board originally considered this issue and their recommendations. The Homebuilders Associates recently drafted a proposal, which they feel would be a compromise, for the board to consider requiring continuing education for the licensed contractor in lieu of requiring a sunset date on the provisional license. The continuing education would amount to 8 hours of continuing education credits every two years with a minimum of four hours in code related issues. The HBA feels that this compromise would allow the board to recommend the provisional license without having to implement a requirement for a sunset date. Mr. Flory said that the qualified person or persons would be the ones who would be obligated to take the continuing education but anyone employed by the licensed contractor could also take the continuing education classes. Mr. Flory also stated that the HBA would like to see if the City of Salina would consider coming up with some classes that they could give to the contractors, especially code related classes on specific changes in the code and other requirements that would keep a contractor up to date.

(4:20 - Steve Barnett arrived)

Jerry Frank – Registered Contractor – stated that the licensing issue is about competency. A test does not always prove competency. Those tests age out after a while and are not current information 10 or 15 years down the road. Mr. Frank mentioned that we did “grandfather” the mechanical contractors. He stated that his years of experience should count for something and he shouldn’t have to take a test. He has pulled permits, had his inspections approved and been issued certificates of occupancy and he feels that proves that he would be competent.

Chuck Carroll – Registered Contractor – stated that he has pulled 6 or 7 permits in the last five years and did clarify that although he is not a hands on builder he does serve as project manager and by so doing he saves money on each of his projects by serving as the “general contractor”. Mr. Carroll stated that what he likes about the “grandfathering” (aka: provisional license) is that he would not have to study for a test and since he is not actually the one doing the work he doesn’t want to take a test. He would like to see perhaps a dollar value limit per project to differentiate between the guys who do “small” projects and the ones who do the “big” projects. Mr. Carroll hopes the board will give serious consideration to keeping the provisional license without a sunset date.

Jim Manley – questioned what we planned to do regarding the proposed ordinance and that he is still trying to understand the difference between provisional versus tested license.

Mike Roberts recapped the difference again for the board about the provisional license requirements versus a tested licensed contractor.

Mike Roberts also clarified that the plumbing and electrical skilled trades licenses were grandfathered on the basis of a city administered test that was already in place, so basically those trades had already been tested before they were granted their “grandfathered” status and also had no continuing education requirements. The mechanical contractors were licensed with no test for years, then about five years ago when the test requirement kicked in, they were also grandfathered with no continuing education requirements at that time. Those contractors who are grandfathered in those trades do not have any expectation of reciprocity with other jurisdictions in Kansas or in other states, since they have not taken a nationally recognized test.

Don Marrs - DMA Architects - Mr. Marrs stated that the licensing test is an open book test and basically is an understanding and interpreting of the code. If we grandfather contractors they lose the opportunity to learn the code by taking the test. He supports a sunset date on the provisional license and also thinks that continuing education is a good idea and will be mandated by the state eventually anyway. Mr. Marrs stated that if you allow a provisional license with no sunset date, you might as well stay with the current contractor registration system.

Daryl Bixby – Registered Contractor – Mr. Bixby stated that a test does not necessarily make you a better builder. The continuing education requirement would do this better than a test. The experience is more important. All of the contractors who have been in business for years should be able to apply for and receive a provisional license and not have to take a test. He did say that the continuing education would be a better requirement than a test.

Bob Haworth – asked about the continuing education credits and suggested that if it were a requirement for a contractor’s license and then if that contractor did not keep up with those continuing education classes he would lose his license, or at least would not be able to renew it when it expires. Mr. Haworth stated that perhaps a provisional license with continuing education requirements would be a good idea – maybe a shorter period of time for the contractor who has a provisional license to get his continuing education credits or he would lose his provisional contractor license status.

Kenny Hancock – stated that as an engineer he had to take two eight hour exams four years apart. He stated that he would probably agree with Daryl Bixby – that a test doesn’t necessarily make you a better engineer. The stuff on the test isn’t something that I apply very regularly in my daily activity as a mechanical engineer. The test though is a basic competency tool – that’s what the test is all about – it gives you a baseline of reasonable competency that is recognized nationally. A test can give you an opportunity to make you more aware. Mr. Hancock stated that you have to start somewhere and that a contractor who has been in business for years might be a candidate for a grandfather clause and not require testing, but the new guys should be required to test. Mr. Hancock stated that he used to be in the contracting business and he feels we certainly do not want to put anybody out of business with any requirements that would be too stringent and that we should really think long and hard about requiring a test for everybody. He suggested that perhaps we should consider a provisional license with a sunset date that would be far enough out on the calendar so that it would not affect some of the older guys, since they would probably be retired by the time a test requirement would go into

effect. Mr. Hancock feels that although a test is important and does definitely provide a baseline for competency and although he still draws on the knowledge he gained from taking the tests, he does think that the continuing education is more valuable to the older contractors as well as the new guys – more so than a test might be. He also stated that he thinks the contractors could pass a test, though without a problem. He asked what it costs to take a test – Mike Roberts said he thought it was about \$100.00. Mike also added that there are testing centers in Wichita, Hays, Manhattan and possibly some other locations in Kansas, but Salina is not a testing site.

Mike Flory – stated that the HBA proposal to require continuing education could be modified so that it would be a three year cycle for the continuing education accumulative credits and that would match the three year cycle for the renewal of the contractor's license. Mr. Flory also stated that it would be the desire of the HBA that a contractor who applies for a provisional license would also have to meet the required continuing education credits before a provisional license was approved and issued. This would be a requirement in lieu of a test and perhaps a certain amount of time could be given to the contractor to get those continuing education credits without holding up the provisional license and his ability to continue working as a contractor. Mr. Flory stated again that the local code type classes would be the most important continuing education classes.

Mr. Hancock agreed that if we go with some type of continuing education requirements we need to take a close look at the local codes and come up with some classes that would truly benefit the contractors doing work in Salina.

Jim Manley stated that he thinks the provisional license should have a sunset date of two years and then a test should be required.

Greta Frank – registered nurse, wife of Jerry Frank – stated that building contractors did not get started in their field with the expectation of having to take a test in order to be in business. Not all contractors take exams well and many who do not do well in a classroom setting are still very good contractors who do good work in the field. She feels that those contractors with experience should be given a chance to obtain a provisional license without a test requirement.

Don Marrs – suggests that perhaps a contractor who takes a test he should be given credit toward his continuing education credits for that. Perhaps a provisional license could be approved with a sunset of two years to take the test. If a contractor failed the first test then maybe he should be given another chance to take the test, and his provisional license could be renewed for another period of a specific time, maybe two years.

Jerry Frank – added that he knew a contractor who took a trades test three times before he finally passed it and he has been in business since he was 14 years old. He knew how to do the work, but he did not test well, but that did not make him a bad contractor.

Jim Manley – asked how other cities did the grandfathering or provisional type licenses.

Mike Roberts - stated that every community we surveyed in Kansas provided for a provisional license with no sunset date, except for Lawrence, which he believes is a 5 year sunset date but he was not absolutely certain of that time period, but there is a definitive sunset date on their ordinance after which you must be tested. Mr. Roberts also stated that most of those communities do require continuing education credits.

Jim Manley – said that he believes Johnson County also has a sunset date.

Mike Roberts – said that he disagrees – Johnson County’s provisional license is good unless you fail to meet the continuing education requirements. If you fail to meet the continuing education requirements then your provisional license expires and cannot be renewed. The contractor would then be required to test in order to obtain a license.

Jim Manley asked about the types of tests available – Are they nationwide tests? Are there skilled trades ones and general contractor one (tests)?

Mike Roberts referred to the staff report included in the packet for today’s meeting and said that there are two nationally recognized testing “agencies” and that there are numerous types of tests available depending on the type of work a contractor performs.

Bob Haworth stated that he is opposed to a sunset date on provisional licenses, but would support a requirement for continuing education credits.

Steve Barnett stated that he thinks maybe the board should send the ordinance back to the City Commission with no changes in the proposed ordinance, except for maybe some continuing education requirements.

Jim Manley - stated that the provisional license should not be good “forever” – that is not practical.

Les Appleby - stated that he does not think it was ever intended by this board or the city commissioners or anyone else to put the competent contractors and trades out of business. He said he does not think that we will ever convince the majority of the contractors that a test would be a good thing and said he would seriously support that we grandfather registered contractors in good standing (provisional license) with no sunset date, but with a requirement for continuing education. The continuing education requirement would be a compromise but I think we have to compromise somewhere along the line.

Kenny Hancock – Why are we calling what we did for the mechanical contractors “grandfathered” but we’re calling this “provisional”? Wouldn’t we just be grandfathering in the currently registered contractors and then requiring continuing ed?

Mike Roberts - Grandfathering would usually mean that you are exempt from testing or meeting any other qualifications like work experience or permits obtained for the class of work for which you are requesting a license. You are simply “grandfathered in” based on the fact that you were a registered contractor in good standing at the time the new ordinance went into effect.

A provisional license would have certain provisions that would have to be met by the contractor before that type of license could be approved. Those provisions at the current time include proof of work experience, a documented history of obtaining permits for the class of work for which you are applying and having been a registered contractor in good standing for a certain number of years. A

provisional license would also have a designated “qualified person” who would be the person responsible for meeting all of the requirements.

Jim Manley asked if we had continuing education credits in the original draft ordinance.

Mike Roberts said that we did not. He reminded the board that the discussion of continuing education credits was part of the past meetings, which took place over the course of several months, on contractor licensing, but the board decided not to include that as a requirement for a contractor’s license or renewal thereof. The addition of a requirement for continuing education for provisional as well as regular licenses would be something new and was not included in the original ordinance.

Several board members offered a suggestion that perhaps we should table this item until the July board meeting. Generally, the board is leaning toward adding the requirement for continuing education possibly in lieu of a test requirement for the provisional license and possibly considering continuing education for the regular licenses as well. The board would like to be sure that the registered contractors are given an opportunity to express their opinions. The board also wants to be sure that the contractors understand the changes that are under consideration and what each change might mean to them and directed staff to do so.

Mike Roberts – summarized by saying that this is a very important issue, one that has been discussed at length in this meeting and many previous meetings and so waiting another month to perhaps make the decision would not be un-reasonable. It sounds like the board is somewhat in agreement on some of the issues. Mr. Roberts agrees that staff could be sure to provide information to the contractors prior to the next meeting.

MOTION: Bob Dolan moved to table this agenda item and resume discussion at the July meeting. The motion includes a directive for staff to provide information to the contractors regarding all of the possible changes that are under consideration and what those changes might mean to them.

SECOND: Dallas Bruhl

DISCUSSION: None

VOTE: 8-0 motion passed

Agenda Item “B” also included the issue of the Class D licensing category and the request by the City Commission to consider establishing specific classifications of contractors for this category.

Greg Bengtson, City Attorney, presented a report with a handout specifying the possible sub-categories for the Class D license. (see attached handout)

The City Commission requests the board to consider modifying the Class D license category to be very specific with regard to specific types of licenses and whether or not a test should be required for each particular type of license. Should the specialty licenses be required only for contractors who perform work that requires a permit?

Discussion included comments about the different scenarios under which a contractor might be performing work that would not require a permit versus work that would require a permit and whether

or not those contractors should all be licensed in some sort of category. For example a contractor who performs roofing work normally is not required to obtain a permit and inspections. So, if those types of contractors are not included anywhere in the licensing categories, (Class "D", or a specialty license classification), and then they need to do structural repairs on a roof as part of the re-roofing project they would be required to obtain a permit. If they are not licensed in any categories then they would have to apply for and obtain a contractor's license before they could apply for and obtain a permit for the repairs. Also a contractor who performs stand alone foundation repair work would be required to obtain a permit and therefore would be required to be a licensed contractor. However, that same contractor could perform work for a new foundation on a new building and his work would then be as a sub-contractor and he would not be required to be a licensed contractor under the new licensing requirements. If we would decide to not include all contractors in the licensing requirement then we would need to be sure to communicate the different scenarios that would require them to be licensed in order to obtain a permit.

Discussion also included comments / concerns about the fact that a registered contractor or licensed contractor does have to furnish proof of minimum liability insurance. Some board members indicated that the liability insurance does offer some protection to the consumer for damage to their property. A registered contractor is also providing his address and phone number which makes it possible to contact them if there is an issue regarding permit requirements or other code compliance issues.

Don Marrs – asked about which of these categories (**see handout**) would be able to obtain stand alone permits. He suggested that if we don't inspect we should not have a license requirement or a license category. Mr. Marrs said he likes specific categories of licensing for the Class D but does not support licensing those who do work that does **not** require a permit. For example, a contractor who does millwork should not be required to be a licensed contractor.

Mike Flory asked about an individual building his own home. What about a deck installer who installs a deck on the back of a house or what about a contractor finishing a basement but is only hanging drywall - He would not have to be a Class A, B, or C contractor to do that but would in effect be serving as a general contractor. Mr. Flory reminded the board and audience that the original intent of the contractor registration was to provide some level of protection for the public. If we set up specialty licenses but exclude work that a contractor does that does not require a permit then he thinks we would lose that level of protection for the customer and would have no way to track these contractors.

Mike Roberts echoed Mr. Flory's comments by stating that the contractor registration does provide a mechanism for verifying that they carry liability insurance which would protect the general public. The registration also provides the ability to contact and communicate with contractors and even if the contractors are doing work that did not require a permit there would still be a way to address suspension or revocation of licenses. As far as the owner doing their owner work, he said that is addressed in the original draft ordinance language, which basically states that an owner/occupant can actually perform any of the work but as soon as he hires other contractors to perform that work, then he would then be subject to meeting the same requirements.

Don Marrs – This is not a quality control ordinance. Mr. Marrs states that he understands the insurance requirements for anyone being registered, but you cannot legislate intelligence and

suggested that we not get hung up on the idea that the city should take care of someone who was not capable of hiring somebody to do the work correctly.

Bob Haworth – brought part 2 of Agenda Item B back to the board for action.

MOTION: Les Appleby moved to table (postpone) this issue and resume discussion at the July meeting. This information will also be included in the communication to the registered contractors prior to the July meeting.

SECOND: Jim Manley

DISCUSSION: None

VOTE: 8-0 motion passed

Mr. Haworth thanked the board and the contracting public for their contributions during the many past meetings discussing this issue. Mr. Haworth emphasized that this has not been an issue that has been taken lightly. It has been discussed at length and the recommendations to the City Commission have been well thought out.

(C) Other Business

Bob Dolan passed out information regarding the International Model Energy Code (IMEC) to the board & staff for consideration at a future meeting. This will be an agenda item at a meeting in the next month or two. He said he hopes that Salina will consider being a leader in the movement to adopt energy codes.

Mike Roberts – reported that the City Commission passed on first reading an amendment to the Uniform Mechanical Code which now allows for furnaces in residential detached garages not to be required to meet the 10' separation. This was discussed at past PME meetings (quarterly meeting with Plumbing, Mechanical and Electrical Contractors). The next Board meeting will be Tuesday July 11, 4:00 p.m.

MOTION TO ADJOURN: Meeting was adjourned directly by Mr. Haworth at 5:56 p.m.

Michael Roberts